

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

| | | |
|----------------------------------|---|-----------------------------|
| KAWS, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No.: 1:23-cv-03134-LGS |
| v. |) | |
| |) | |
| THE INDIVIDUALS, CORPORATIONS, |) | |
| LIMITED LIABILITY COMPANIES, |) | |
| PARTNERSHIPS, AND |) | |
| UNINCORPORATED ASSOCIATIONS |) | |
| IDENTIFIED ON SCHEDULE A HERETO, |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

DECLARATION OF CHRISTOPHER TOM

I, Christopher Tom, declare and state as follows:

1. This declaration is based upon my personal knowledge of the facts stated herein or on the business records that were made at the time or in the regular course of business. If called as a witness, I could and would testify to the statements made herein.

2. I am an attorney at law, duly admitted to practice before the United States District Court for the Southern District of New York. I am one of the attorneys for Plaintiff KAWS, Inc. (“Plaintiff”) in this action.

3. On April 14, 2023, Plaintiff filed this action against the entities identified on **Exhibit 1** attached hereto (collectively, the “Defaulting Defendants”), asserting, among other things, claims against Defaulting Defendants.

4. A true copy of the Complaint is attached hereto as **Exhibit 2**.

5. Contemporaneous with the filing of the Complaint, Plaintiff also filed an ex parte application against Defendants for entry of a temporary restraining order, among other relief (the “Application”). On April 14, 2023, the Court granted the Temporary Restraining Order (“TRO”). [Dkt. No. 20]. A true copy of the TRO is attached as **Exhibit 3**. On April 21, 2023, the Court

extended the TRO through May 12, 2023 (“Order Extending TRO”). [Dkt. No. 23]. A true copy of the Order Extending TRO is attached as **Exhibit 4**. On May 12, 2023, the Court granted and entered the Preliminary Injunction Order, which gave Plaintiff permission to serve Defendants using the alternative methods of service under Fed R. Civ. P. 4(f)(3). [Dkt. No. 28 at ¶ 9]. A true copy of the Preliminary Injunction Order is attached as **Exhibit 5**.

6. Pursuant to Fed. R. Civ. P. 4(f)(3), the Court authorized Plaintiff to serve certain defendants the TRO, the Summons, and the Complaint by delivery of (i) PDF copies of the TRO together with the Summons and Complaint and (ii) a link to a website where each Defendant can download such documents and other related filings to Defendants’ e-mail addresses as provided by the third-party Financial Institutions and/or Marketplace Platforms as defined in the TRO. [Dkt. 42, ¶ 9].

7. On April 27, 2023, the Clerk of this Court issued a Summons directing defendants to serve upon Plaintiff’s counsel an Answer to the Complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure (“Rule 12 Motion”) within twenty-one (21) days after service of the Summons, and to also file its answer or Rule 12 Motion with the Court. [See Dkt. No. 29].

8. On May 9, 2023, pursuant to the Order Extending TRO, Plaintiff served the Defaulting Defendants with the Summons, Complaint TRO and the Order Extending TRO in accordance with to the methods of alternative service authorized by the Court for certain defendants as reflected on the Proof of Service filed with the Court on May 16, 2023. Id.

9. A true copy of the Proof of Service filed with this Court is attached as **Exhibit 6**.

10. As a result, Defaulting Defendants should have filed their respective Answers or Rule 12 Motions on or before May 30, 2023.

11. More specifically, on May 9, 2023, Plaintiff’s attorney emailed the Summons, Complaint, TRO and Order Extending TRO to Defendants via the email addresses identified during the investigations of the claims and provided by the third-party platforms for which the Defendants maintain accounts –Amazon.com (“Amazon”), DHgate.com (“DHgate”), eBay.com (“eBay”), etsy.com (“etsy”), redbubble.com (“RedBubble”), Walmart.com (“Walmart”), and

Wish.com (“Wish”) (collectively, the “Marketplace Platforms”). The email also included a link to a website (<http://kaws-cases.com/case-23-cv-03134.html>) containing all relevant documents, including the Complaint and TRO, to be accessed by the Defendants. Attached as **Exhibit 7** hereto are true and correct copies of the email to Defendants. Attached as **Exhibit 8** hereto is a true and correct copy of the Service Website.

12. Since service of the Summons, Complaint, and TRO, Plaintiff’s counsel has also corresponded with representatives of the Marketplace Platforms. These third-party Marketplace Platforms have specifically identified the Defendants’ accounts (the “Defendant Internet Stores”).

13. Despite multiple methods of service, however, to date, the Defaulting Defendants have neither served upon me or anyone else acting on Plaintiff’s behalf, nor filed with the Court, an Answer, a Rule 12 Motion, or any other response to the Complaint on or before March 28, 2023.

14. Notably, certain defendants are not subject to default and are not included within the Defaulting Defendants because they have been voluntarily dismissed, have settled and are in the process of being voluntarily dismissed, or have requested or are entitled to additional time to respond or otherwise answer the complaint. These non-defaulting defendants are listed below (identified by the name and number referenced on the Schedule A to the Complaint):

| Doe No. | Defendant Seller | Defendant Online Marketplace |
|---------|---------------------------------|---|
| 8. | DIEHARDDIECAST2020 | https://www.amazon.com/sp?seller=AVESG77X6CC55 |
| 11. | Fly跟秒T-12-22day | https://www.amazon.com/sp?seller=A3IJDIE2BXE2FG |
| 14. | JEM supply | https://www.amazon.com/sp?seller=A2PG1ZFNCFZEOS |
| 15. | Jinxiuhe | https://www.amazon.com/sp?seller=A11EU4I87RT7W0 |
| 17. | Lastma | https://www.amazon.com/sp?seller=AH9I1CCSC2CTU |
| 24. | RuiChangJunLuFangBaiHuo Dian US | https://www.amazon.com/sp?seller=A2DL5KT2OEA SID |
| 56. | auparadisdujouet | https://www.ebay.com/usr/auparadisdujouet |
| 62. | gsb_31 | https://www.ebay.com/usr/gsb_31 |

| | | |
|------|-------------------|---|
| 63. | hello_from_japan | https://www.ebay.com/usr/hello_from_japan |
| 64. | hiroo-jp2015 | https://www.ebay.com/usr/hiroo-jp2015 |
| 65. | huflor56 | https://www.ebay.com/usr/huflor56 |
| 67. | jorgealfonso21 | https://www.ebay.com/usr/jorgealfonso21 |
| 69. | justdesign | https://www.ebay.com/usr/justdesign |
| 70. | kawdecor | https://www.ebay.com/usr/kawdecor |
| 75. | masib_8772 | https://www.ebay.com/usr/masib_8772 |
| 78. | moto_hobby_jp | https://www.ebay.com/usr/moto_hobby_jp |
| 84. | sheeaneo3 | https://www.ebay.com/usr/sheeaneo3 |
| 87. | storeshel | https://www.ebay.com/usr/storeshel |
| 88. | tanpoo0 | https://www.ebay.com/usr/tanpoo0 |
| 89. | vintage_company | https://www.ebay.com/usr/vintage_company |
| 94. | z8tsq-88 | https://www.ebay.com/usr/z8tsq-88 |
| 104. | ClubInfinite | https://www.etsy.com/shop/ClubInfinite |
| 106. | CuteLittlePresent | https://www.etsy.com/shop/CuteLittlePresent |
| 107. | DarkMoonLightArt | https://www.etsy.com/shop/DarkMoonLightArt |
| 114. | KawsCollection | https://www.etsy.com/shop/KawsCollection |
| 121. | MEPhoneCase | https://www.etsy.com/shop/MEPhoneCase |
| 124. | MotionUniversity | https://www.etsy.com/shop/MotionUniversity |
| 134. | TREDLABART | https://www.etsy.com/shop/TREDLABART |
| 135. | WhiteMoonLightArt | https://www.etsy.com/shop/WhiteMoonLightArt |
| 136. | XaysShop | https://www.etsy.com/hk-en/shop/XaysShop |

15. We have investigated the infringing activities of the Defaulting Defendants, including attempting to identify the registrant of each associated domain name and its contact information. Our investigation confirmed that the Defaulting Defendants are mostly domiciled in China. As such, I am informed and believe that the Defaulting Defendants are not infants, in the military, and/or incompetent individuals.

16. Since the Defaulting Defendants have failed to Answer or otherwise appear in this action, and the time for Defaulting Defendants to Answer or otherwise appear in this action has expired, Defaulting Defendants are in default.

17. Default Judgment is appropriate against the Defaulting Defendants, who are each individually responsible and liable for the infringing activities that have occurred in this action. Indeed, each Defaulting Defendant is subject to statutory damages, as more particularly described in the Memorandum of Law, submitted herewith.

18. None of the relief sought against each Defaulting Defendant requires adjudication of any other person or entity's rights or obligations.

19. On June 22, 2023, the Clerk of the Court filed a Clerk's Certificate of Default in this matter, a copy of which is attached as **Exhibit 9**.

20. Thus, it is respectfully requested that the Court enter Final Judgment of Default, in the form submitted herewith, against the Defaulting Defendants.

21. The legal bases for entry of Final Judgment of Default, including the basis for subject matter jurisdiction and damages are further set forth in the Memorandum of Law submitted herewith, which is incorporated herein by reference.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 6, 2023 in Cranford, New Jersey.

/s/ Christopher Tom
Christopher Tom